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Subject: OCSPP News for June 8, 2021

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Senate Weighs EPA Budget; House Panel Plans Water Infrastructure Markup

N/A, Inside EPA

<https://insideepa.com/week-ahead/senate-weighs-epa-budget-house-panel-plans-water-infrastructure-markup>

Congress returns from its break with a busy agenda. A Senate Appropriations panel will examine the Biden administration's request to significantly increase EPA's budget in fiscal year 2022. Meanwhile, a House committee plans to mark up legislation boosting EPA's clean water infrastructure program. And several committees are also holding separate hearings examining PFAS contamination, climate resilience and DDT dumping.

EPA Budget

EPA Administrator Michael Regan is slated to testify June 9 before the Senate Appropriations interior subcommittee on the agency's FY22 budget request.

Under Regan's leadership, EPA is seeking \$11.2 billion for the agency in the coming year, a boost of \$2 billion across the board, but which the agency says in today's dollars would return EPA to similar levels from FY10 and the early 2000s.

Background Reading: Biden EPA's FY22 Budget Hike Seeks To Reverse Years Of 'Level' Funding

Water Infrastructure

The House Transportation & Infrastructure Committee is holding a June 9 meeting to mark up H.R. 1915, the Water Quality Protection and Job Creation Act of 2021, which reauthorizes EPA's clean water infrastructure programs. The committee is also slated to mark up its \$547 billion surface transportation bill.

Background Reading: Despite Common Ground, House Hearing Underscores Infrastructure Battle

PFAS Contamination

The Senate Environment & Public Works Committee will hold a June 9 hearing on per- and polyfluoroalkyl substances (PFAS) contamination, focusing on affected citizens and states.

The hearing comes as a bipartisan group of House lawmakers are pushing to create a major new EPA research and remediation strategy to address PFAS contamination as part of any upcoming infrastructure package.

Background Reading: Lawmakers Seek Major New EPA Program On PFAS In Infrastructure Bill

In addition to the Senate hearing, the state-led group known as the Interstate Technology and Regulatory Council will sponsor a virtual June 10 roundtable to discuss a variety of topics related to PFAS, including human and ecological health effects, site risk assessment, regulations, risk communication and stakeholder perspectives.

And the Northeast Waste Management Officials' Association will host a webinar June 8 titled, "PFAS in Water: Removal, Treatment & Destruction."

Air Quality

EPA is hosting a June 8 webinar, titled, "Strategic Shutdowns of Air Quality Monitors: Evidence from Jersey City and Across the U.S." The forum will feature a paper that offers a framework for testing "whether local governments skip pollution monitoring in expectation of a looming air quality deterioration," the agency says on its website.

DDT Dumping

The House Natural Resources water, oceans, and wildlife subcommittee will hold a hearing June 8 titled, "DDT Dumping Off the Southern California Coast: Ecological Impacts, Scientific Needs, and Next Steps." The hearing comes following

scientific findings that have mapped more than 25,000 barrels of what are believed to contain DDT-waste sitting on the seafloor in southern California, prompting calls from Sen. Dianne Feinstein (D-CA) for federal action to tackle the contamination.

Background Reading: Study confirms 25,000 barrels at DDT dump site off California coast

Climate Resilience

The House Homeland Security Committee's emergency preparedness panel is hosting a June 8 hearing on how climate change is a "threat to the homeland."

In addition, the House Select Committee on the Climate Crisis is holding a June 11 hearing on "building climate-resilient communities," which will feature testimony from mayors of "cities on the front lines of the climate crisis."

Recycling Policy

Politico is hosting a June 8 discussion about how efforts to create a "circular economy" to reduce waste can be aligned with steps to combat climate change.

Environmental Justice

The Business Council for Sustainable Energy and the Clean Energy Business Network are holding a June 9 webinar to discuss the link...

Asbestos Data From Importers, Makers to Get Collected by EPA

Maya Earls, Bloomberg Law

<https://bna.news/bna.com/environment-and-energy/asbestos-data-from-importers-makers-to-get-collected-by-epa>

The U.S. Environmental Protection Agency will issue a new rule that requires reporting on asbestos under the Toxic Substances Control Act, after a judge criticized the agency's current reporting rule for containing several reporting "loopholes," according to a filing in a California federal court.

The agency will submit its proposed rule requiring reports by manufacturers, importers, and processors of asbestos and asbestos-containing products within nine months of the effective date of the agreement filed in the U.S. District Court for the Northern District of California.

The EPA will submit a final rule no later than 18 months after the effective date of the agreement, according to the settlement filed Monday.

The agreement comes as a win for states and for environmental and public health groups that challenged the agency's Chemical Data Reporting rule. The current rule exempts asbestos-containing articles and impurities from reporting, according to the complaint.

The reporting loopholes "are large and cannot be cured by EPA's modeling efforts," wrote Judge Edward M. Chen in his December ruling.

The EPA will drop its challenge to the court's order to amend its CDR reporting rule, the settlement says.

Linda Reinstein, president and co-founder of Asbestos Disease Awareness Organization, said in a statement Monday that the settlement is a "huge win for public health."

"We've always said that we can't protect Americans from asbestos if we don't know where it is," she said, her organization seeks a ban on the imports and use of asbestos.

"Today's commitment by the Biden Administration's EPA to collect missing information about the import and use of asbestos is an important step toward ensuring all Americans live in a community that is healthy and safe," said California Attorney General Rob Bonta (D) in a statement Monday.

Sussman and Associates represented the environmental and public health groups. The states were represented by their respective attorneys' general.

The Justice Department represented the EPA.

The case is Asbestos Disease Awareness Org. v. EPA, N.D. Cal., No. 3:19-cv-00871, 6/7/21.

To contact the reporter on this story: Maya Earls in Washington at mearls@bloomberglaw.com

EPA agrees to create TSCA reporting rule for asbestos

Terry Hyland, Chemical Watch

<https://chemicalwatch.com/277223/epa-agrees-to-create-tsca-reporting-rule-for-asbestos>

The US EPA has agreed to craft a TSCA rule requiring manufacturers, importers and processors to report on their uses of asbestos and asbestos-containing articles, bringing to a close a three-year legal battle over the scope of asbestos reporting.

The changes were announced today as part of a settlement agreement between EPA and the Asbestos Disease Awareness Organization (ADAO) and five other NGOs that had petitioned the EPA in 2018 to close current "loopholes" in asbestos reporting. The settlement also resolves similar claims raised by several US state attorneys general.

Under the agreement, the EPA will propose a TSCA section 8(a) rule requiring companies to report on imports of asbestos, as well as mixtures and articles containing the substance. The rule will require disclosure of how the material is used and processed.

Reporting requirements will also apply to imports of articles containing asbestos as an impurity. According to ADAO, that could extend reporting requirements to a talc-based consumer products and industrial items contaminated with the fibrous substance.

The EPA said it would propose the section 8 reporting rule within nine months of the agreement, with a final rule due within 18 months, or by roughly December 2022.

"This is a huge win for public health," said Linda Reinstein, president and co-founder of ADAO. "The lack of reporting on asbestos has been a gaping hole in EPA's efforts to protect Americans from exposure to this lethal carcinogen. We've always said that we can't protect Americans from asbestos if we don't know where it is."

While the EPA finalised 'part 1' of its TSCA risk evaluation of chrysotile asbestos in January, the new reporting requirements will help to inform the EPA's supplemental 'part 2' risk evaluation of legacy uses of chrysotile asbestos and of other forms of the fibrous substance.

A recent draft strategic plan indicated the agency expects to complete the supplemental risk evaluation by December 2024.

Implements December order

The settlement largely implements the requirements from a December 2020 federal court order directing the EPA to end chemical data reporting (CDR) rule exemptions for asbestos-containing articles, impurities and processors.

That ruling from the US District Court for the Northern District of California was temporarily put on hold in March, after the EPA asked the court to send the matter back to the agency so it could craft its own response to the NGO's petition.

The settlement allows the agency to avoid another potentially complicated update to the CDR rule, as originally envisioned in the court's December order. Instead, the EPA said it would issue a TSCA section 8(a) reporting rule that would "address the information-gathering deficiencies identified" by the court.

The case is Asbestos Disease Awareness Organization, et al v Wheeler, et al.

Bill to Phase Out PFAS Heads for Approval by Unanimous Vote

Emilia Otte, CT Examiner

<https://ctexaminer.com/2021/06/08/bill-to-phase-out-pfas-heads-for-approval-by-unanimous-vote/>

A type of man-made chemicals found in consumer packaging and firefighting foam will likely be phased out in the state of Connecticut because of their suspected negative effects on the environment and public health.

A bill that aims to end the use of firefighting foam and food packaging passed 146-0 in the State House of Representatives on Monday. The Senate is expected to approve the legislation before the end of session.

PFAS, or per- and polyfluoroalkyl substances, are a group of 4,700 chemicals that are found in cookware, firefighting foam and food packaging. The US Center for Disease Control has found links between PFAS and high blood pressure, changes in liver enzymes, increased risk of certain types of cancer and low infant birth rates.

"These PFAS chemicals are extraordinarily dangerous," said State Rep. Christine Palm, D-Chester, who introduced the bill. "They are detected in breastmilk ... They are found throughout our environment and it is a problem that is getting worse."

PFAS are sometimes called "forever chemicals" because they possess a strong fluoro-carbon bond that resists breaking down. As a result, they can build up both in the environment and within the human body.

The bill will phase out the use of AFFF fire fighting foam, one of the biggest sources of PFAS spills. Starting in July 2021, the foam will no longer be used for training and testing purposes, and by October will no longer be used for fighting fires. Certain locations, like airports, will be exempt because of federal regulations that require this particular foam be kept on the premises, until October of 2023.

The Connecticut Department of Energy and Environmental Protection is required to develop a program to take back and dispose of the AFFF foam. Raymond Frigon, Assistant Director of the Bureau of Water Protection at the Department of Energy and Environmental Protection, estimated that about 40,000 gallons of foam need to be disposed of in the state.

Frigon told CT Examiner in April that collecting and disposing of the AFFF foam is the most important thing his agency can do to prevent further PFAS contamination. The project is funded by a \$2 million bond as part of Gov. Ned Lamont's 2019 PFAS Action Plan.

Frigon said they were considering several options for disposing of the foam. High-temperature incineration is one, but Frigon said that burning the foam might cause by-products they weren't aware of. Another option is to store the foam in a facility or place it in a landfill with safeguards in case the foam leaks.

Frigon said that the foam is used almost on a daily basis within the state, and many areas that have become hotspots for PFAS were training grounds for firefighters.

The bill also requires DEEP to approve an alternative to the foam — Palm mentioned a foam called Universal F3 Green as

a fluorine-free alternative. The Connecticut Department of Emergency Services and Public Protection's Commission on Fire Prevention and Control has identified this as a replacement foam, according to the department's website.

Food packaging

A second common use of PFAS is in consumer packaging. The chemicals are used to make certain equipment and packaging more durable, to grease-proof food containers and to non-stick cooking pans.

The bill would prevent the use of PFAS chemicals in food packaging beginning in December of 2023. It makes an exception for medical devices and medical equipment, which use a particular class of PFAS called fluoropolymers.

New York, Washington and Maine have all passed laws banning the use of PFAS in food packaging, and Massachusetts introduced a similar bill in its state legislature this year.

Palm said that the bill would not penalize consumers or small businesses that purchase PFAS-containing items. It would be limited to banning the manufacture and the distribution of PFAS-containing materials within the state. State Rep. Stephen Harding Jr, R-Brookfield, gave the example that if a company...

California Assembly OKs Bills Banning 'Juvenile,' Other Products With PFAS

Curt Barry, Inside TSCA

<https://insideepa.com/tsca-news/california-assembly-oks-bills-banning-juvenile-other-products-pfas>

The California Assembly has advanced two bills that would ban the sale of "juvenile" products and food packaging that contain per- and poly-fluoroalkyl substances (PFAS) while also tightening labeling mandates for cookware manufacturers, including a ban on claiming that products are free of substances that belong to chemical classes like PFAS.

The bills, which are opposed by chemical and product manufacturing groups, would bypass the state toxics department's landmark Safer Consumer Products (SCP) green chemistry program -- a program that was intended in part to discourage lawmakers from pursuing one-off bills banning or limiting individual chemicals in favor of a scientifically rigorous vetting process.

"I think the Legislature is finally hearing us that although we like the SCP program and the [department] staff, it is moving WAY too slowly and the Legislature has a role to play to protect health sooner than later," says one environmentalist who supports the new legislation.

California's two bills are advancing after two other states -- Vermont and Maryland -- recently enacted laws banning some or all PFAS in certain products, in another marker for states' increasing focus on limiting uses of the chemicals ahead of any federal action under the Toxic Substances Control Act or other EPA authorities.

One of the California bills, AB 652 by Assemblywoman Laura Friedman (D-Glendale), would prohibit, beginning July 1, 2023, a person from selling or distributing in commerce any new juvenile products that contain intentionally added PFAS. The bill also requires manufacturers to use the least toxic alternative when replacing PFAS in juvenile products.

AB 652 passed the Assembly on May 20 by a 54-0 vote, with 24 lawmakers not voting. It now awaits a hearing in the Senate Environmental Quality Committee.

The measure defines "juvenile product" as a product "designed for use by infants and children under 12 years of age, including, but not limited to, a baby or toddler foam pillow, bassinet, bedside sleeper, booster seat, changing pad, child restraint systems for use in motor vehicles and aircraft, co-sleeper, crib mattress, floor playmat, highchair, highchair pad, infant bouncer, infant carrier, infant seat, infant sleep positioner, infant swing, infant travel bed, infant walker, nap

cot, nursing pad, nursing pillow, playmat, playpen, play yard, polyurethane foam mat, pad, or pillow, portable foam nap mat, portable infant sleeper, portable hook-on chair, soft-sided portable crib, stroller, and toddler mattress.”

However, in response to industry and other concerns, lawmakers amended AB 652 last month to specify that “juvenile product” does not include electronics marketed to children, “including a personal computer, audio and video equipment, calculator, wireless phone, game console, handheld device incorporating a video screen, or any associated peripheral such as a mouse, keyboard, power supply unit, or power cord.”

In addition, it excludes any medical device, an “internal component of a juvenile product that would not come into direct contact with a child’s skin or mouth during reasonably foreseeable use and abuse of the product,” or an adult mattress.

AB 652 is sponsored by the Environmental Working Group and is supported by a variety of organizations, including nurses’ associations, the American Academy of Pediatrics, Breast Cancer Prevention Partners, California Municipal Utilities Association, California Water Association, CALPIRG, Clean Water Action, Los Angeles County Sanitation Districts, and Physicians for Social Responsibility.

But the bill is opposed by the American Chemistry Council (ACC), Advanced Medical Technology Association, Auto Care Association, California Chamber of Commerce, International Sleep Products Association, and Juvenile Products Manufacturers Association, among others.

Tim Shestek, an ACC lobbyist, argued during an April committee hearing that AB 652 is unnecessary in part because the...

EPA Agrees To 18-Month Deadline For TSCA Asbestos Reporting Rule

Maria Hegstad, Inside TSCA

<https://insideepa.com/tsca-news/epa-agrees-18-month-deadline-tsca-asbestos-reporting-rule>

EPA is proposing a court settlement that would give it 18 months to propose and finalize a rule adding asbestos to the Chemical Data Reporting (CDR) program, a victory for environmentalists who sought to force the agency to quickly set new mandates for gathering data on the material that can be used in ongoing evaluation and regulation under TSCA.

In a stipulation and proposed order filed June 7 with the U.S. District Court for the Northern District of California, EPA and the plaintiffs in the joined cases Asbestos Disease Awareness Organization (ADAO), et al., v. EPA and State of California et al. v. EPA ask Judge Edward Chen to endorse a settlement that would require the agency to propose an asbestos CDR rule within nine months, and to take final action within 18 months of the agreement being enacted.

The proposed settlement agreement submitted for Chen’s approval says that “no later than nine months from the effective date of this agreement,” EPA will submit for Federal Register publication a proposed Toxic Substances Control Act (TSCA) rule “for the maintenance of records and submission to EPA of reports by manufacturers, importers and processors of asbestos and mixtures and articles containing asbestos (including as an impurity).”

The deal follows through on statements from Department of Justice attorneys at an April 15 hearing where they said the two sides had agreed in principle on a settlement that would resolve the suit, which challenged the Trump EPA’s denial of TSCA section 21 rulemaking petitions asking it to list asbestos in the CDR program.

“This is a huge win for public health. . . . The lack of reporting on asbestos has been a gaping hole in EPA’s efforts to protect Americans from exposure to this lethal carcinogen. We’ve always said that we can’t protect Americans from asbestos if we don’t know where it is,” said Linda Reinstein, ADAO’s co-founder and president, in a June 7 statement on the agreement.

Although the section 21 petition process has been part of TSCA since it was first passed in 1976, until Congress overhauled the law in 2016 few petitions were filed and none had prompted court challenges, making the ADAO settlement a landmark win for environmentalists and states who sought to subject asbestos to CDR mandates.

It comes while another section 21 petition suit, over drinking water fluoridation, is still pending in Chen's courtroom.

"In the long history of TSCA, this is the first case where the citizens' petition provisions of Section 21 have been used successfully to obtain a court decision compelling EPA to initiate rulemaking it was unwilling to conduct," Bob Sussman, a former EPA official and counsel to ADAO, said in the group's statement.

"Section 21 was included in the law so citizens can hold EPA accountable for failing to use its TSCA authorities to address important public health concerns. It is good news for all of us that this remedy is working as intended and motivating EPA to do the right thing."

ADAO's statement also praises the timeframe for EPA to act, which was a concern in the case because the agency has already completed an evaluation of risks from current uses of chrysotile asbestos and is in the early stages of a separate "part 2" evaluation of risks from other fiber types and legacy chrysotile uses, such as its presence in buildings as insulation. EPA has indicated that it intends to issue draft planning documents on the legacy evaluation for comment this year.

Given the pace of that process, some stakeholders worried that even if the agency added asbestos to the CDR program, data on its manufacture, importing and use might come too late to inform the TSCA process. Pointing to that ongoing "part 2" asbestos evaluation, ADAO's statement says it "believes the new reporting rule will assure that EPA has identified all ongoing uses of asbestos and can make science-based determinations of their risks."

Legal Precedent

The agreement is conditioned on Chen's approval, as...

EPA's Plans To Overhaul TSCA Assessments Renew Debate On PPE Use

Maria Hegstad, Inside TSCA

<https://insideepa.com/daily-news/epa-s-plans-overhaul-tsca-assessments-renew-debate-ppe-use>

The Biden EPA's announcement that it intends to reconsider Trump-era assumptions on workers' use of personal protective equipment (PPE) in at least two TSCA chemical evaluations is restarting debate on how the toxics program should address worker safety -- a thorny question since the law gives officials little direction on that subject.

While the agency is still awaiting decisions from the U.S. Court of Appeals for the 9th Circuit on its requests to remand two Toxic Substances Control Act (TSCA) chemical evaluations in part to rework their approach to PPE, two former officials say the fact that it has made that request at all shows a clear break from the Trump-era policy of assuming workers will follow workplace-safety mandates to wear PPE when gauging chemical exposure risks.

David Fischer, a former deputy chemicals chief during the Trump EPA, and now counsel at the law firm Keller and Heckman, tells Inside TSCA, "We did have a lot of conversations at EPA when I was there: Is it reasonable to assume people aren't following the [workplace safety] law? What is reasonable? I'd think it is reasonable to assume that."

But both he and Clinton EPA chemicals chief Jim Aidala -- now a consultant with the law firm Bergeson & Campbell -- acknowledge that it could be difficult to argue that the question has been definitively settled because TSCA includes no clear mandate on the subject.

Aidala says the chemicals law is silent on key details of how PPE use should be considered in risk evaluations, for

instance how long gloves can be used before they are no longer effective, because they become saturated in a chemical or wear out. "Some of those fine points are not clearly defined in the statute," he said. "That's part of what they are running into, all of them."

Thus, Fischer says, PPE considerations are likely to end up as "another point of disagreement" between the current administration and its predecessor on chemicals policy.

In two pending 9th Circuit cases, one over the solvent methylene chloride and the other addressing the cluster of flame retardants known as HBCD, EPA has filed declarations from top chemicals official Michal Freedhoff saying her office "intends to reconsider" Trump EPA assumptions on workers' use of PPE "and whether the Agency should instead consider the use of PPE (and, as applicable, other industry occupational safety practices) during the risk management phase."

Fischer tells Inside TSCA he thought that when the Trump EPA examined PPE use "we had the right balance" in a policy that assumed workers would follow Occupational Safety and Health Administration (OSHA) requirements -- which he and other supporters of the Trump-era policy say reflects real-world conditions of chemicals' uses, in compliance with TSCA language.

"We did look into this issue pretty carefully, if we know that [PPE] is being used. . . . You're supposed to capture whether or not a chemical presents unreasonable risk in its conditions of use. If folks are using it in a certain way and that entails following OSHA regulations and using PPE, you don't presume something that is not the case."

But Aidala says TSCA's silence on the subject gives the new administration leeway to reexamine it -- and described that silence as a notable omission in the 2016 bill that reformed the law, compared with Congress' explicit mentions of PPE in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

"With pesticides, two things parallel that and result in settl[ing] the debate a bit more," he said. Specifically, he pointed to FIFRA's requirement to evaluate products' risks consistent with "widespread and recognized practices," which he says includes a "practical" level of PPE use, and its assumption that users will follow restrictions on a product's label, including those requiring PPE.

"You assume that the [pesticide product's] label is followed. Because if you didn't, what do you do? [It would be a] wild west. What [would you] put in the...

It's literally raining PFAS around the Great Lakes, say researchers

Garrett Ellison, mlive

<https://www.mlive.com/public-interest/2021/06/its-literally-raining-pfas-around-the-great-lakes-say-researchers.html>

CLEVELAND, OH — Rain that fell on Ohio this spring contained a surprisingly high amount of toxic "forever chemicals" known as PFAS, according to raw data from a binational Great Lakes monitoring program that tracks airborne pollution.

Rainwater collected in Cleveland over two weeks in April contained a combined concentration of about 1,000 parts-per-trillion (ppt) of PFAS compounds. That's according to scientists at the Integrated Atmospheric Deposition Network (IADN), a long-term Great Lakes monitoring program jointly funded by the U.S. Environmental Protection Agency and Canada.

The samples are part of a new IADN effort to analyze the prevalence of PFAS in precipitation across the Great Lakes. The network has other monitoring stations in Illinois, Michigan and New York and the chemicals were detected there, too.

The preliminary data is unpublished and undergoing quality reviews, but researchers say early analysis shows PFAS chemicals to be major contaminant in regional rain and snow.

“You can actually say it’s raining PFAS at this point,” said Marta Venier, an environmental chemist Indiana University, speaking to reporters convened online by the Institute for Journalism and Natural Resources (IJNR) in May.

Since August 2020, IADN has been analyzing PFAS in rainwater samples from five sites around the region where the IADN has, since 1990, been testing for persistent organic pollutants like PCBs, organochlorine pesticides and flame retardants.

The sites are located in Cleveland, Chicago, Sturgeon Point, N.Y., Sleeping Bear Dunes in Michigan’s northern Lower Peninsula and Eagle Harbor in the Upper Peninsula.

The team measured 38 different PFAS compounds in ambient air and rainwater. The total concentration in most samples ranged from 100 to about 400-ppt across the sites, with higher counts at urban compared to rural or remote sites.

After nearly a year’s worth of sampling, Venier said preliminary analysis also shows PFAS concentrations are orders of magnitude higher than other pollutants in the samples.

Many of the PFAS chemicals in the samples are so-called “short chain” replacement compounds that have been favored by manufacturers in recent years as an alternative to earlier variations with longer chemical chains, such as PFOS and PFOA, which were phased out under regulatory pressure in the United States but are still manufactured overseas.

The samples show significant quantities of 6:2, 8:2, and 10:2 FTCAs, or fluorotelomer carboxylic acids often used in industrial settings or as grease-proofing agents on food contact paper.

“It’s clearly reflective of the transition from long-chain to short-chain,” Venier told MLive. “Those are fairly abundant in these samples and those are also the ones that we see a lot in consumer products.”

Venier said people don’t need to worry about becoming stain-resistant after being out in the rain. The primary concern is still exposure through ingestion or contact with PFAS-coated products, but the contaminated precipitation does, nonetheless, spread the robust chemicals around the environment where they build-up in water bodies and wildlife.

Spread through atmospheric deposition is also likely contributing to a manmade “background” level of the contaminants within the environment, she said.

“They accumulate,” she said. “Once they are out there, they really stay out there. All of this is to say it’s not an immediate concern for a person, but it is a concern long-term for the environment because they keep raining out.”

The IADN research was previewed last month by graduate student Abby DeMeyer during the International Association for Great Lakes Research (IAGLR) annual conference. DeMeyer said the team plans to study seasonal trends in concentrations as their raw data collection increases.

There is still much to be learned about long-range movement of PFAS through the atmosphere, but the IADN effort adds to a growing body of research on the atmospheric movement and deposition...

Coalition Co-led by AG Healey Secures Federal Court Order and Settlement Requiring Asbestos Reporting to Protect Public Health

N/A, State of Massachusetts

<https://www.mass.gov/news/coalition-co-led-by-ag-healey-secures-federal-court-order-and-settlement-requiring-asbestos-reporting-to-protect-public-health>

BOSTON — Under a settlement reached by a coalition of 11 states co-led by Massachusetts Attorney General Maura Healey and California Attorney General Rob Bonta, the U.S. Environmental Protection Agency (EPA) has agreed to require the chemical industry to provide the agency with information about the use and importation of asbestos needed to protect the public from the serious health risks posed by exposure to highly toxic asbestos.

Today's settlement follows a December 2020 ruling from the United States District Court for the Northern District of California in favor of the coalition, mandating EPA to impose the reporting requirements on the chemical industry. The Trump Administration's Department of Justice filed a motion challenging that decision, but today's settlement—reached with the Biden Administration's EPA—ensures that EPA will have to act under the Court's mandate to move forward with the required reporting.

"Asbestos is a known carcinogen that kills tens of thousands of people every year, and the Trump Administration inexplicably chose to ignore the very serious health risks it poses for our residents," AG Healey said. "We're grateful to the Biden Administration for reaching this groundbreaking settlement that will ensure EPA holds the chemical industry accountable and provides the agency with the information it needs to protect workers, families, and children from this toxic material."

"Asbestos is a known human carcinogen, and excellent alternatives are available for most if not all of its uses," said Michael Ellenbecker, Co-Director of the Massachusetts Toxics Use Reduction Institute. "It is thus extremely important that members of the public are fully aware of all possible exposures they may have to this deadly substance. I applaud this settlement reached by the Massachusetts Attorney General that affirms the court's ruling that is so important for public health."

Asbestos is a highly hazardous mineral fiber used in a variety of piping and building materials, from roofing and flooring, to siding and wallboard, to caulking and insulation, as well as in sheet gaskets, brake blocks, aftermarket automotive brakes and brake linings, and other consumer products. Exposure to asbestos can lead to life-threatening illnesses, including asbestosis, lung cancer, gastrointestinal cancer, mesothelioma, and other lung disorders and diseases. Currently, those who import articles that contain asbestos or otherwise manufacture such products, including those products in which asbestos may be present as an unintentional contaminant, are exempt from providing EPA with information about these asbestos-containing products.

In January 2019, AG Healey and then California Attorney General Xavier Becerra led a coalition in filing a petition with EPA under the Toxic Substances Control Act (TSCA) urging the agency to issue new regulations to provide data on the importation and use of asbestos in the United States. The coalition asserted that the new set of regulations is needed for the agency to meet its mandate under TSCA to prevent unreasonable risks to health and the environment presented by asbestos and help ensure EPA's regulatory decisions are consistent with the best available science. EPA denied the states' petition and the multistate coalition, led by Massachusetts and California, sued the agency in July 2019, along with a group of NGOs led by the Asbestos Disease Awareness Organization.

Today's settlement, when approved by the Court, will compel EPA to issue the regulations sought in the AGs' petition and will mark the first time a petition of this kind under TSCA has resulted in court-ordered rulemaking.

AG Healey's Office has been a leading advocate for the increased protections from toxic chemicals required under the overhauled TSCA, which was signed into law by President Obama in June 2016. Joining AG Healey and AG Bonta in the settlement are the attorneys general of Connecticut, Hawaii, Maryland, Maine, Minnesota...

Toxic chemicals are linked to lower egg counts in women

Jasmin Hassan, Pauliina Damdimopoulou, and Richelle Duque Björvang, The Independent

https://www.independent.co.uk/health_and_wellbeing/women-eggs-fertility-toxic-chemicals-b1859887.html

Birth rates are decreasing worldwide. In all European countries they're even dropping below population replacement levels, which refers to the number of children needed per woman to keep a population stable. While these decreases might be due to many adults intentionally postponing when they have their first child – or actively choosing not to have children – an increasing number of studies suggests these don't fully explain decreasing birth rates. Some research also indicates that decreasing fertility is a major contributing factor in this decline.

One factor linked to decreased fertility is the presence of industrial chemicals found in our environment. Much is known about the impact of these chemicals on male fertility, but little research has looked into how they affect women. This is what our recent study sought to do.

We found that exposure to common chemical contaminants was associated with reduced egg counts in the ovaries of reproductive-aged women. Though these chemicals have since been banned, they were once used in household products like flame retardants and mosquito sprays, and are still present in the environment and in foods like fatty fish.

Fewer eggs

We measured the levels of 31 common industrial chemicals, such as HCB (an agricultural fungicide) and DDT (an insecticide), in the blood of 60 women. To gauge their fertility, we measured the number of immature eggs they had in their ovaries by counting them in ovarian tissue samples using a microscope. Because ovaries are located inside the body and would require surgery to access, we chose pregnant women who were having a caesarean section, as this made it possible to access tissue samples without additional surgery.

Unlike men, women are only born with a fixed set of immature eggs in their ovaries, and cannot produce new ones after birth

We found that women with higher levels of chemicals in their blood sample also had fewer immature eggs left in their ovaries. We found significant connections between reduced egg numbers and certain chemicals, including PCB (used in coolants), DDE (a by-product of DDT) and PBDE (a flame retardant). As female fertility is age-dependent, we made sure to adjust our calculations accordingly depending on the age of the woman in question. This showed us that exposure to these chemicals resulted in fewer eggs for women of all ages.

We also found that women with higher chemical levels in their blood had to try for longer to get pregnant. For the women with the highest levels of chemicals in their blood, it took more than a year.

Unlike men, women are only born with a fixed set of immature eggs in their ovaries, and cannot produce new ones after birth. A woman's "reserve" (the number of eggs in her ovaries) naturally diminishes through monthly ovulations, as well as by normal follicle death. When depleted below a critical level, natural fertility ends and menopause begins. Our findings imply that toxic chemicals may speed up the disappearance of ovarian follicles, which could lead to reduced fertility and earlier menopause.

Chemical soup

We're exposed to industrial chemicals through our food, the products we put on our skin, and even through our mothers while developing in the womb.

The number of industrial chemicals, as well as their abundance in the environment, has steadily increased since the 1940s – with devastating effects on ecosystems, wildlife and even human fertility. Many chemicals were introduced to the market with little testing for safety. This has led to a situation where humans and the environment are exposed to an extensive "soup" of industrial chemicals...

EPA to ban weedkiller, reversing Trump approval

Marc Heller, E&E News

https://www.eenews.net/eenewspm/2021/06/08/stories/1063734469?utm_campaign=edition&utm_medium=email&utm_source=eenews%3Aeenewspm

EPA today said it will end the use of the weedkiller propazine, reversing the Trump administration's embrace of the farm chemical shown to harm dozens of endangered species.

In a notice in the Federal Register, EPA said it's canceling the product's registration at the request of the sole manufacturer, MilliporeSigma, and ordering remaining stocks to be used by June 8, 2022.

Farmers use propazine in Texas and other states on sorghum fields, and it's sometimes used on container-grown plants. The agency didn't comment on the background behind the cancellation but said EPA had received no public comments in response to an announcement in March that it intended to take that action.

The Center for Biological Diversity, an environmental group opposed to many pesticides, hailed the decision and pointed to the chemical's resemblance to another controversial pesticide, atrazine, known for contaminating drinking water.

"The long-overdue decision to ban this dangerous poison is great news for endangered species and the health of our children," Nathan Donley, environmental health science director at the CBD, said in a news release. "We hope this commonsense decision reflects a broader commitment by the Biden administration to finally get some of the oldest and most harmful pesticides off the market for good."

Propazine's quiet defeat contrasts with EPA's positive stance toward it, and atrazine, last year. Last September, the agency said it was advancing renewed registrations together for propazine, simazine and atrazine — known as triazines — as important weed control treatments.

The Triazine Network, an industry coalition, celebrated then-Administrator Andrew Wheeler's move at the time, calling it a "major milestone." The administrator, the group said, had "declared these fundamental crop management tools safe for continued use."

The Agriculture Department also supported propazine, telling EPA the three related chemicals are a "vital herbicide resistance management tool for growers, as well as being critical herbicides for farmers practicing no-till and conservation tillage."

EPA's move to cancel the registration grew out of a legal agreement in 2019 with the Center for Biological Diversity and Pesticide Action Network North America, in which EPA agreed to analyze impacts on endangered species.

The harmed species include whooping cranes, Attwater's greater prairie chickens and ocelots, the CBD said.

Facing mounting number of glyphosate lawsuits, Bayer offers 5-point plan to address future Roundup weedkiller claims

Jody Heemstra, Genetic Literacy Project (Dakota Radio News Group)

<https://geneticliteracyproject.org/2021/06/08/facing-growing-mounting-number-of-glyphosate-suits-bayer-offers-5-point-plan-to-address-future-monsanto-roundup-weedkiller-claims/>

Bayer has announced [May 27] a series of actions it plans to implement following the denial of the motion to preliminarily approve the Roundup231 class settlement agreement, designed to address potential future litigation, by Judge Vince Chhabria of the U.S. District Court for the Northern District of California.

The company says the new package of measures, which combine a number of legal and commercial actions, is designed to help the company achieve a level of risk mitigation that is comparable to the previously proposed national class

solution.

The court's decision closes the door on an MDL court-supervised national class solution to manage potential future litigation, which would have been the fairest, most efficient mechanism for all parties. Still, we have legal and commercial options that together will achieve a similar result in mitigating future litigation risk, and we will pursue them as quickly as possible. Significantly, the weight of scientific evidence and the conclusions of all expert regulators worldwide continue to support the safety of glyphosate-based herbicides. Last week, the U.S. Environmental Protection Agency (EPA) filed a brief with the U.S. Court of Appeals for the 9th Circuit in which it affirmed once again that glyphosate 'poses no human-health risks of concern.' Thus, these actions are being taken exclusively to manage litigation risk and not because of any safety concerns.

The five-point plan includes:

1. Creation and promotion of a new website with scientific studies relevant to Roundup's231 safety, and a request that EPA approves corresponding language on Roundup231 labels

This will include a reference link to the label for all Roundup231 products that will take consumers and professional users to a website the company will maintain and promote containing scientific studies relevant to the safety concerns at issue in the litigation. Bayer intends to create and maintain this website and promote it to all customer audiences regardless of whether EPA ultimately approves the label addition. Importantly, this website will not make any claims or draw conclusions about the safety of Roundup231; instead, in the interest of transparency and accessibility, it would provide a one-stop resource for consumers and professional users to a significant body of scientific study to help them make their own decisions about their use of the products.

2. While the Company will remain in the residential lawn and garden market, it will immediately engage with partners to discuss the future of glyphosate-based products in the U.S. residential market, as the overwhelming majority of claimants in the Roundup231 litigation allege that they used Roundup231 Lawn and Garden products

None of these discussions will affect the availability of glyphosate-based products in markets for professional and agricultural users.

3. Future claims settlements and independent science advisory panel

The company will explore alternative solutions aimed at addressing potential future Roundup231 claims. Any such programs would help bring resolution to potential future claims brought by individuals. The company also will explore the creation of an independent scientific advisory panel comprised of external scientific experts to review scientific information regarding the safety of Roundup231. The results would be released publicly and added to the website above, actions that reflect both the company's confidence in the safety of Roundup231 and its commitment to scientific rigor and transparency.

4. Ongoing efforts to settle existing claims will be reassessed

The company will continue to be open to settlement discussions, as long as claimants are qualified and resolutions can be reached on appropriate terms. This effort to resolve claims amicably is a step the company is taking in good faith to bring an...

Texas vineyards file suit over dicamba

Tribune News Service staff, Northwest Arkansas Democrat Gazette

<https://www.nwaonline.com/news/2021/jun/08/texas-vineyards-file-suit-over-dicamba/>

ST. LOUIS -- A group of nearly 60 Texas vineyards filed suit Friday against agribusiness companies Bayer and BASF, alleging that their weedkiller dicamba, used heavily in the state's vast cotton fields, has damaged thousands of acres of wine grapes.

The case from 57 growers near Lubbock is believed to be the first dicamba suit from the U.S. wine industry. It says that

95% of productive grapevines have sustained damage across dozens of vineyards there, with the worst occurring in the past three years, as more and more local cotton growers used the herbicide.

Combined with other newly filed cases -- including a separate suit from a beekeeper who was formerly Arkansas' biggest honey producer -- the legal action reflects the expanding and diversifying web of litigation ensnaring the chemical and the companies behind it. And while Bayer agreed last summer to pay \$400 million to settle dicamba suits, the agreement only applies to soybean damage reported by last year.

"I think we're going to end up seeing more like this," said Paul Lesko, a St. Louis-based lawyer involved with separate dicamba cases.

Bayer said on Friday that it had yet to be served with the Texas lawsuit, which seeks hundreds of millions in dollars in damages, but that the company "stands strongly behind the safety and utility" of its dicamba technology pioneered by Creve Coeur, Mo.-based Monsanto, which it acquired in 2018.

"We have great sympathy for any grower who suffers a crop loss, but there are many possible reasons why crop losses might occur, including extreme winter weather conditions that can have particularly devastating effects on perennial crops like vineyards," the German life sciences company said in a statement.

BASF suggested that a 2019 freeze and "other known sources of herbicides" are among the factors that have contributed to problems at the heart of the new case.

"BASF has had the opportunity to review these claims and the alleged damage and strongly disagrees with the allegations in the lawsuit," the German chemical company said in a statement of its own.

Texas' High Plains are home to intense cotton production, and the first dicamba-tolerant seeds brought to the market were cotton varieties from Monsanto, introduced in 2015.

That same year, dicamba complaints began to emerge in other cotton-producing areas, such as southeast Missouri's Bootheel region. Farmers complained that dicamba vaporized and drifted to other fields, harming plants and crops that weren't engineered to resist it. Reports of damage intensified in future years, after Monsanto's 2016 release of soybean seeds engineered with the new, dicamba-resistant trait.

Millions of acres of crop damage have now been reported across U.S. farms -- including claims that led to a \$265 million jury ruling last year against Bayer and BASF in favor of Missouri peach farmer Bill Bader -- all fueling heated controversy and tearing an often bitter rift in the agricultural community.

Places like the Bootheel and neighboring regions of northeast Arkansas, where both cotton and soybeans are widely grown, saw the country's greatest concentrations of dicamba complaints. Many farmers adopted dicamba-resistant seeds -- some for their strong yields, others to avoid the risk of future damage.

Bayer urges 11th Circuit to uphold Roundup preemption ruling

Brendan Pierson, Reuters

<https://www.reuters.com/legal/litigation/bayer-urges-11th-circuit-uphold-roundup-preemption-ruling-2021-06-07/>

Bayer AG on Friday urged the 11th U.S. Circuit Court of Appeals to find that state law failure-to-warn claims over its Roundup weedkiller are preempted by federal law, which would create a circuit split that could send the issue to the Supreme Court.

In its appellate brief, Bayer said the Environmental Protection Agency had found that Roundup's active chemical, glyphosate, did not cause cancer, meaning it could not be required to warn of cancer risk under state law. The case drew

attention earlier this year when plaintiffs' firms accused Bayer of reaching an unethical "pay-to-appeal" agreement with Georgia plaintiff John Carson, which the company has denied.

Ashleigh Madison of Southeast Law, a lawyer for Carson, declined to comment.

Carson is one of tens of thousands of people alleging that he developed cancer from using Roundup, which Bayer acquired as part of its \$63 billion purchase of Monsanto Co in 2018. He brought claims of strict liability design defect, strict liability failure to warn, negligence and breach of implied warranties.

U.S. District Judge Christopher Ray of the Southern District of Georgia dismissed the failure-to-warn and warranty claims as preempted by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the law under which the EPA regulates weedkillers. He allowed the remaining claims to proceed only to the extent that they did not allege inadequate warnings by Bayer.

The company agreed to settle the surviving claims for \$99,000 on the condition that Carson appeal the failure-to-warn claim.

In a filing in April, lawyers at Andrus Wagstaff and other firms representing other Roundup plaintiffs called the deal potentially unethical, saying it effectively forced Carson to pay a \$99,000 penalty if he drops his appeal. Bayer attorney Michael Imbroscio of Covington & Burling told Reuters that was a mischaracterization and that the deal was a typical "high-low" settlement under which Carson will receive an undisclosed higher sum if he prevails on appeal and retain the \$99,000 if he loses.

On appeal, Carson argued that his claim was not limited to the product's labeling, which is regulated by the EPA under FIFRA.

Bayer said Friday that FIFRA reaches beyond a product's labels to include other materials accompanying it, meaning a state-specific duty to warn would necessarily clash with the federal labeling requirements.

"Success for plaintiff under Georgia's failure to warn tort would require the imposition of a duty upon Monsanto that is different – and in direct conflict – with the requirements set up under the FIFRA statutory scheme," it said.

If the 11th Circuit affirms, it will be in conflict with the 9th Circuit, which found a similar claim not preempted in *Hardeman v. Monsanto Co.*

A federal judge in San Francisco last month rejected a proposed \$2 billion class action settlement that would have resolved future Roundup claims. The deal would have been on top of a previous \$9.6 billion settlement that resolved all but about 30,000 of roughly 125,000 Roundup claims.

The case is *Carson v. Monsanto Co*, 11th U.S. Circuit Court of Appeals, No. 21-10994.

For Carson: Ashleigh Madison of Southeast Law

For Bayer: Michael Imbroscio of Covington & Burling

President Biden's FY 2022 Budget Request Includes \$11.2 Billion For EPA

Lynn Bergeson, Bergeson & Campbell Blogs

<http://blog.braginfo.org/entry/president-bidens-fy-2022-budget-request-includes-11.2-billion-for-epa>

On May 28, 2021, the Biden-Harris Administration submitted President Joseph Biden's budget for fiscal year 2022 (FY 2022) to Congress. According to EPA's May 28, 2021, press release, the budget request advances "key EPA priorities,

including tackling climate change, advancing environmental justice, protecting public health, improving infrastructure, creating jobs, and supporting and rebuilding the EPA workforce.” The President’s FY 2022 budget request supports:

Rebuilding Infrastructure and Creating Jobs: The budget provides \$882 million for the Superfund Remedial program to clean up some of the nation’s most contaminated land, reduce emissions of toxic substances and greenhouse gases (GHG) from existing and abandoned infrastructure, and respond to environmental emergencies, oil spills, and natural disasters;

Protecting Public Health: The budget includes \$75 million to accelerate toxicity studies and fund research to inform the regulatory developments of designating per- and polyfluoroalkyl substances (PFAS) as hazardous substances while setting enforceable limits for PFAS. In FY 2022, EPA will advance public health by providing an additional \$15 million and 87 full-time equivalent employees (FTE) to build agency capacity in managing chemical safety and toxic substances under the Toxic Substances Control Act (TSCA);

Tackling the Climate Crisis with the Urgency Science Demands: The FY 2022 budget recognizes the opportunity in tackling the climate crisis by developing the technologies and solutions that will drive new markets and create good paying jobs. The budget restores the Air, Climate, and Energy Research Program and increases base funding by more than \$60 million, including \$30 million for breakthrough research through the Advanced Research Projects Agency-Climate (ARPA-C) with DOE. The budget provides an additional \$6.1 million and 14 FTEs to implement the recently enacted American Innovation and Manufacturing (AIM) Act and reduce potent GHGs while supporting new manufacturing in the United States;

Advancing Environmental Justice and Civil Rights: The budget includes more than \$900 million in investments for environmental justice-related work, collectively known as EPA’s Accelerating Environmental and Economic Justice Initiative, elevating environmental justice as a top priority across the agency. The budget also proposes a new national program dedicated to environmental justice to further that goal;

Supporting States, Tribes, and Regional Offices: Almost half of the total budget, \$5.1 billion, will support states, tribes, and localities through the State and Tribal Assistance Grants account;

Prioritizing Science and Enhancing the Workforce: The FY 2022 budget includes an increase of 1,026 FTEs “to stop the downward slide in the size of EPA’s workforce in recent years to better meet the mission.” Within this increase are 114 FTEs to propel and expand EPA’s research programs to ensure the agency has the science programs that communities demand from EPA. Also included are 86 additional FTEs to support the criminal and civil enforcement programs to ensure that environmental laws are followed.

Sewage Sludge Fertilizers Sold at Hardware Stores Found to be Contaminated with PFAS Chemicals

N/A, Beyond Pesticides Blog

<https://beyondpesticides.org/dailynewsblog/2021/06/sewage-sludge-fertilizers-sold-at-hardware-stores-found-to-be-contaminated-with-pfas-chemicals/>

Biosolid-based fertilizer products like Milorganite, often sold to consumers as “organic,” are contaminated with dangerous PFAS chemicals, according to a study published by Sierra Club and Ecology Center. Biosolids, also known as sewage sludge, have been found in the past to contain residues of hazardous pesticides, heavy metals, antibiotics and other pharmaceuticals, personal care products, and a range of other toxicants. While the latest news may not be surprising for careful shoppers who have long avoided biosolid fertilizers, none of these risks are relayed to consumers on fertilizer packages. With fertilizer regulations failing the American consumer, it becomes more important than ever to seek out certified organic fertilizer products.

Sierra Club and Ecology Center looked at nine fertilizer products, each produced from the sewage sludge of a particular American city. For instance, Milorganite, perhaps the most well-known biosolid sludge fertilizer, is derived from the Milwaukee, Wisconsin sewage treatment system. Other products were derived from locations including Sacramento, CA (Synagro); Tacoma, WA (TAGRO); Madison, GA (Pro Care); Las Vegas, NV (Ecoscraps); Eau Claire, WI (Menards Premium Natural Fertilizer); Jacksonville, FL (Greenedge); North Andover, MA (Earthlife); and Washington, DC (Cured Bloom).

As the report notes, many of these products advertise themselves as “organic,” “natural,” or “eco-friendly.” But with

these products, “organic” does not mean the same as certified organic products, which prohibit the use of fertilizers containing biosolids. The source of this discrepancy lies with the Association of American Plant Food Control Officials (AAPFCO). Fertilizer labeling is currently enacted on a state-by-state basis, and most states follow AAPFCO’s model language. The group defines organic fertilizer as a material containing carbon and one or more elements other than hydrogen and oxygen essential for plant growth. This definition permits fertilizers to be labeled as “organic” even if they do not comply with the USDA National Organic Program (NOP) standards to produce organic food.

While the U.S. Environmental Protection Agency (EPA) is in charge of regulating sewage sludge, its oversight does not extend beyond pathogens and heavy metals. This leaves a wide range of contaminants that can make their way into lawns and gardens that unsuspecting consumers may think they’ve kept organically managed. As the report finds, PFAS chemicals are a glaring omission by EPA.

PFAS – poly and per fluoroalkyl substances – is a moniker representing a wide range of fluorinated synthetic chemicals. These chemicals have been linked to cancer, liver damage, birth and developmental problems, reduced fertility, asthma and a range of increasingly common health conditions. Of utmost concern is that PFAS are considered “forever chemicals,” as there is little indication that these substances break down into a state in the environment in which they do not remain toxicologically active. While there is growing recognition from the Biden Administration that action must be taken on PFAS, the range of new products and places in which the substances are being found highlights the extent of the challenge, and regulators’ collective mistake in allowing these substances to remain on the market in the first place.

Sierra Club and Ecology Center found PFAS in every biosolid fertilizer tested. In fact, each product was contaminated with 14 to 20 different PFAS chemicals, out of 33 that were tested for (and there are over 4,700 different PFAS that have been manufactured, according to the National Institutes of Health (NIH)). Results reveal even higher levels of precursor chemicals to PFAS production, and up to 6,000 times greater amounts of unknown fluorinated chemicals in the tested products. The highest amount of PFAS was found in Cured Bloom Soil Conditioner, produced from Washington, DC’s sewage treatment process. The report notes that...

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